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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ROBERT LEE WOODS, Defendant and Appellant.	B239866 (Los Angeles County Super. Ct. No. TA118773)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura R. Walton, Judge. Reversed.

Sally Patrone Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Robert Lee Woods appeals from the judgment entered following the jury verdict convicting him of second degree robbery, with the finding that he personally inflicted great bodily injury upon the victim. (Pen. Code, §§ 211, 12022.7, subd. (a).)[1] In a bifurcated proceeding, the jury also found that the robbery was committed for the purpose of promoting criminal conduct by gang members. (§ 186.22, subd. (b)(1)(C).) After a separate bench trial, defendant was found to have suffered prior serious felony convictions within the meaning of sections 1170.12, subdivisions (a) through (d), 667, subdivisions (b) through (i), and 667, subdivision (a), and to have served a prior prison term within the meaning of section 667.5, subdivision (b). He was sentenced to 45 years to life in state prison. Defendant contends there is insufficient evidence to sustain the robbery conviction and the true finding on the gang allegation, and the prosecutor committed *Batson/Wheeler*[2] error. We conclude the trial court's finding that the prosecutor provided a race-neutral reason for exercising a peremptory challenge is not supported by the record. Accordingly, the judgment is reversed.

STATEMENT OF FACTS

I. The Robbery

At approximately 4:00 p.m. on June 27, 2011, Araceli Sanchez was walking home with items she had purchased at the grocery store. She noticed two men with bicycles across the street. As she passed, one of the men, whom she identified as defendant, approached from behind and screamed at Sanchez to give him her wallet. She turned to face defendant, who was standing two feet from her, pulled out her wallet, and gave it to him. He received the wallet in his left hand and struck Sanchez in the face with his right. She fell to the ground and defendant cursed her. He joined the other male across the street and they rode away on their bicycles.

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[1] All further statutory references are to the Penal Code.

[2] *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.

Sanchez went home and called 911. She gave the operator a description of the two males, during which she said the person who robbed her was wearing a white t-shirt. Sanchez spoke to Los Angeles Police Officer Mike Leese and his partner. After searching the area where the robbery occurred, Leese returned to the station to look at tapes from video cameras that monitored the Imperial Courts Housing Development, as the crime had occurred nearby. He found a tape of the robbery taking place. Later, another officer who had viewed the same tape, was monitoring live video feed from the Imperial Courts camera when he saw someone who matched the description of the robber. He contacted Leese and directed him to that location. As Leese arrived, he saw defendant and another male walking between two buildings. As Leese and his partner exited the patrol vehicle, the males ran. The officers pursued and captured both men.

Sanchez was brought to where defendant and his companion were held by police. She viewed each man separately, and identified defendant as the individual who had taken her wallet and punched her.[3]

A few days after the robbery, Rafael Mata, who was investigating the crime, showed Sanchez a number of photographs and asked whether she recognized anyone depicted. She identified and initialed a picture of defendant and said he was the man who robbed her.[4]

II. The Gang Allegation

On April 19, 2011, Officer Ivan McMillan and his partner had a conversation with defendant and filled out a field identification card. Defendant admitted that he was a member of the PJ Watts Crips gang, also known as the Project Crips, and said his gang moniker was "Bam." Defendant had a "PJ" tattoo on the left side of his face.

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[3] As a result of the blow, Sanchez underwent surgery and had a plate inserted in her face.

[4] Sanchez also viewed a video that depicted the robbery as it occurred. Although the video showed defendant was shirtless at the time of the robbery, Sanchez insisted he was the person who took her purse. The video was played for the jury.

Officer Francis Coughlin worked in a gang suppression unit and was familiar with the Project Crips gang, having been assigned to its area as a patrol officer for two years. The Imperial Courts housing project is in Project Crips gang territory. The primary activities of the gang include robberies, rapes, shootings, and narcotics sales.[5] Defendant had a number of gang tattoos, including one that read, "soldier." According to Coughlin, this particular tattoo meant that defendant was willing to commit crimes for the gang to enhance its credibility and respect in the community. The "PJ" tattoo on defendant's face demonstrated that he had put in work for the gang and was a loyal and respected member. Coughlin believed defendant was a member of the Project Crips gang. When asked a hypothetical question based on the facts of the robbery, Coughlin opined that the crime was committed for the benefit of the gang. The bases for his opinion were: (1) committing the crime benefitted the individual member because it demonstrated his loyalty to the gang and his willingness to put in work for it; (2) violent crimes like robbery benefit the gang "by creating an atmosphere of fear and intimidation in the community"; (3) the blow to Sanchez's face was unnecessary and emphasized the gang's willingness to commit violent acts against members of the community, which causes citizens to not cooperate with police; and (4) the gang benefitted from the proceeds of the robbery.

Martin Flores is on the panel of gang experts appointed by the court. He regularly interacts with gang members, working to reduce gang violence. Flores reviewed the police reports in the case and the field identification cards pertaining to defendant. He spoke with defendant on two occasions. Flores is very familiar with the PJ Watts gang, as he has worked in Imperial Courts with ex-gang members and families in the area.

Defendant admitted to Flores that he was a PJ Watts member, but said that he became less involved with the gang six years earlier after a stabbing incident. Flores believed that defendant was no longer an active member of the gang. Flores thought it was significant that defendant had moved out of PJ Watts territory. Given a hypothetical

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[5] The officer testified to the predicate acts required by the gang statute.

based on the robbery, Flores stated the crime was not committed for the benefit of a gang. His reasons were: (1) the victim was a woman and in the gang culture "women are hands off"; (2) the gang's name was not uttered; (3) no gang signs were thrown; (4) the communities are working hard to put an end to gang violence, demonstrating that the individual was working on his own; and (5) a gang member would be given no credit for committing a crime against a woman.

Defendant testified that in June of 2011, he and his wife were living on Rodeo Road, not in the Imperial Courts Housing Project. He acknowledged that in 2004, he was convicted of robbery, and in 2005, of residential burglary. He stated that he stopped being a PJ Watts Crips gang member in 2002 or 2003. At that time, defendant was stabbed by individuals in the county jail and decided that he no longer wanted to participate in the gang lifestyle.

After he was released from prison in 2009, defendant did not return to Imperial Courts until the day he was arrested. On the day of his arrest, he went there to visit relatives. He was arrested as he was walking to the bus. Defendant denied using the moniker "Bam," and stated that Coughlin and other officers lied when they testified to the contrary.

DISCUSSION

I. Sufficiency of the Evidence

Defendant contends there is insufficient evidence to sustain the robbery conviction and the finding that the crime was committed for the benefit of a criminal street gang. We disagree.

In assessing a challenge to the sufficiency of the evidence, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant

guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) The substantial evidence standard also applies to gang enhancement findings. (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 321-322.)

Defendant asserts it is clear that the victim was mistaken when she described the perpetrator's clothing. She insisted that the robber was wearing a white t-shirt and the video established that he was shirtless. In addition, the victim did not mention that her attacker had a tattoo and defendant points out that he has the initials "PJ" tattooed on his face. Defendant also claims the victim had only seconds to view the perpetrator and he did not have any of the victim's property on him when he was arrested. Thus, he suggests, the evidence establishing that he assaulted and robbed the victim is insufficient as a matter of law. He is incorrect.

The victim had an adequate opportunity to view her attacker. Defendant downplays this fact by arguing that the victim was struck in the face and her ability to see must have been impaired. This ignores Sanchez's testimony that she stood face to face with the robber from a distance of two feet prior to handing over her wallet. She identified defendant in a field showup three hours after the incident, in a photographic lineup a few days later, at the preliminary hearing and at trial. Moreover, she was certain of her identification. At trial, she was asked what it was about defendant that she

recognized. She replied, "His face. I saw it very well when he came, and I don't forget his face."

Although it is true that there were discrepancies between the victim's version of events and the video of the crime, such as what the robber was wearing, it was for the jury to weigh their significance. "Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) The victim's testimony was more than ample to sustain defendant's conviction.

With respect to the gang enhancement, defendant again emphasizes the contrary evidence he presented and invites us to reconsider the matter. He relies on the cases of *In re Daniel C.* (2011) 195 Cal.App.4th 1350 and *In re Frank S.* (2006) 141 Cal.App.4th 1192 and argues the lack of evidence that gang signs were thrown or that other gang members participated in the robbery establishes the crime could not have been committed with the intent to benefit the gang. We are not persuaded. In the present case, defendant was a PJ Watts gang member, the crime was committed in the heart of PJ Watts territory, and defendant and his companion fled to the safety of the Imperial Courts housing project, an area that both experts stated was a PJ Watts stronghold. In addition, Daniel C. committed an *Estes*[6] robbery and Frank S. possessed a weapon. Here, defendant engaged in an act of gratuitous violence, enhancing the gang's criminal reputation in the community and increasing fear in the neighborhood, thereby making it less likely that residents would cooperate with police. The jury's finding is supported by substantial evidence.

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[6] *People v. Estes* (1983) 147 Cal.App.3d 23. The case established that the use of force to prevent a security guard from regaining possession of property elevated a petty theft to a robbery.

II. The Batson/Wheeler Motion

Defendant contends the trial court erred in denying his *Batson/Wheeler* motion. He argues the prosecutor's stated reason for exercising a peremptory challenge against an African-American juror was pretextual and the court failed to make a sincere and reasoned evaluation of the prosecutor's justification as required by *Batson/Wheeler*. We agree.

The challenged juror was married and had three children. She was employed as a manager for a telecommunications company and her husband worked in construction. She had no previous jury experience and had been the victim of vandalism. No one was arrested for committing that offense. She had a nephew who had been arrested for driving under the influence. The juror had no opinion as to whether the nephew had been treated fairly by the system. She believed she could follow the jury instructions and thought she could give defendant a fair trial.

After the prosecutor exercised a peremptory challenge to excuse the juror, defense counsel objected to the excusal pursuant to *Batson/Wheeler*. The court found the defense had made a prima facie showing that the challenge was the product of group bias.[7] The prosecutor explained that she excused the juror "based on the occupation of her husband as a construction worker, or she said he was in construction." The prosecutor said a challenge based on a person's occupation is race-neutral, acknowledging that she had no reason to challenge the juror for cause. Opposing counsel stated, "That seems like a really facetious reason because there's nothing about this case where — the fact that her husband [is] a construction worker that would affect her ability to be fair." The prosecutor reiterated that she was allowed to use her peremptory for whatever reason she chose as long as it was a race-neutral one. The court noted that there were four other African-American jurors in the jury box and, without further inquiry, denied the defense motion.

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[7] The Attorney General argues that defendant failed to establish a prima facie case of group bias; however, given the trial court's ruling to the contrary, the issue is moot. (*People v. Lenix* (2008) 44 Cal.4th 602, 613, fn. 8.)

Initially, defendant alleges that the prosecutor's reason was not supported by the record. He claims the "prosecutor's explanation that [the juror] could not be fair because she worked in construction appears to be simply a pretext, especially since it was incorrect. It was not the prospective juror, but her husband, who worked 'in construction.'" Defendant misreads the record. The prosecutor clearly stated that she excused the juror because of the husband's occupation.

As the trial court found a prima facie case of group bias, the burden shifted to the prosecutor to demonstrate that the challenge was exercised for a race-neutral reason. (*People v. Jones* (2011) 51 Cal.4th 346, 360.) A prosecutor's "'justification need not support a challenge for *cause*, and even a "trivial" reason, if genuine and neutral, will suffice.' [Citation.] A prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons. [Citations.]" (*People v. Lenix, supra*, 44 Cal.4th at p. 613.) However, the prosecutor "must persuade the court that the peremptory challenges in question were exercised 'on grounds that were reasonably relevant to the particular case on trial or its parties or witnesses—i.e., for reasons of specific bias as defined herein.' [Citations.]" (*People v. Turner* (1986) 42 Cal.3d 711, 720.) "The prosecutor therefore must articulate a neutral explanation related to the particular case to be tried. [Fn. omitted.] The trial court then will have the duty to determine if the defendant has established purposeful discrimination. [Fn. omitted.]" (*Batson v. Kentucky, supra*, 476 U.S. at p. 98.) "[T]he issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." (*Miller-El v. Cockrell* (2003) 537 U.S. 322, 339.)

"We review a trial court's determination regarding the sufficiency of a prosecutor's justifications for exercising peremptory challenges '"with great restraint."' [Citation.] We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court's ability to distinguish bona fide reasons from sham excuses. [Citation.] So long as the trial court makes a sincere and

reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal. [Citation.]" (*People v. Burgener* (2003) 29 Cal.4th 833, 864.)

The difficulty in the present case is that the trial court made no effort to evaluate whether the prosecutor's race-neutral explanation was credible; it simply accepted her reason for the challenge. Although we recognize that a juror's occupation (or perhaps the spouse's occupation) may be a sufficient race-neutral reason for the exercise of a peremptory challenge, there must be a connection between the occupation and the case being tried that explains why the juror may be biased. For example, in *People v. Watson* (2008) 43 Cal.4th 652, 677-678, a juror was excused in part because of her employment as a social worker in the Department of Children's Services. The prosecutor justified the challenge by stating he believed that the juror might be too sympathetic to the defendant, who would be presenting evidence of abuse and neglect during his childhood. The Supreme Court determined that the prosecutor's challenge was race-neutral. Similarly, in *People v. Landry* (1996) 49 Cal.App.4th 785, 790-791, the prosecutor excused a juror who worked in a youth services agency because he believed that she might be biased in the defendant's favor. The appellate court found a plausible connection between the juror's occupation and a specific potential bias.

Here, the trial court did not ask the prosecutor to explain why the juror's spouse's employment in the construction field was of concern in this case. Our review of the record leads us to conclude that the prosecutor's explanation appears inherently implausible. This was a generic strong-arm robbery trial. Even if we engage in rank speculation, we cannot think of a reason why a juror who was married to a construction worker would be biased against the prosecution. Perhaps if the prosecutor had been asked to provide a more complete explanation, she would have been able to provide a plausible race-neutral reason for excusing the juror. Thus, we are left with the question whether, in the context of this case, the juror's spouse's employment alone was a race-neutral reason sufficient to rebut the prima facie case of group bias.

The case of *People v. Turner, supra,* 42 Cal.3d 711, provides the answer. There, the prosecutor excused an African-American juror because he was a truck driver and had difficulty understanding the questions he was asked. In examining the reasons, the Supreme Court wrote: "We note that the prosecutor began his explanation by emphasizing that Mr. Chappell 'was a truck driver,' as if that fact were a talisman whose invocation would somehow make the discrimination disappear. On the contrary, the remark suggests yet another impermissible group bias behind this challenge, because trial by a jury from which working-class people are systematically excluded is also a violation of the representative cross-section rule. [Citations.] The cited cases refute any implication that truck drivers as a class are not intelligent enough to be jurors. And the record refutes any such implication as to Mr. Chappell individually." (*Id.* at pp. 722-723.) As to a second African-American juror, the prosecutor's stated reason for his challenge was that "'something in her work'" would "'not be good for the People's case.'" (*Id.* at p. 725.) The court found the reason "so lacking in content as to amount to virtually no explanation." (*Ibid.*) After the panel found the prosecutor did not demonstrate that his challenges were exercised for race-neutral reasons, it concluded that the trial court "failed to discharge its duty to inquire into and carefully evaluate the explanations offered by the prosecutor." (*Id*. at p. 728.)

So it is here. The prosecutor steadfastly insisted that a challenge based on a juror's occupation alone was sufficient to defeat a claim of group bias. She is incorrect. It cannot be the case that a prosecutor may excuse a juror from a protected class merely by stating that the juror is an architect, an accountant, or a construction worker. "If such vague remarks were held to satisfy the prosecution's burden of rebutting a prima facie case of group discrimination, the defendant's constitutional right to trial by a jury drawn from a representative cross-section of the community could be violated with impunity." (*People v. Turner, supra,* 42 Cal.3d at p. 725.) Thus, the trial court had an obligation to determine whether the prosecutor's justification for excusing the juror was a disguised attempt to mask group bias. Because the record does not support the court's conclusion that the challenge was race-neutral, the judgment must be reversed.

DISPOSITION

The judgment is reversed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.